



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

THURSDAY, THE 27TH DAY OF FEBRUARY 2025 / 8TH PHALGUNA, 1946

CRL.REV.PET NO. 95 OF 2018

AGAINST THE JUDGMENT IN CRL.A NO.291/2016 OF ADDITIONAL DISTRICT AND SESSIONS COURT II, NORTH PARAVUR ARISING OUT OF THE JUDGMENT IN SC NO.615 OF 2015 OF ADDITIONAL ASSISTANT SESSIONS COURT, NORTH PARAVUR.

REVISION PETITIONER/APPELLANT/ACCUSED:

BAWA KUNJU
AGED 40 YEARS, S/O. MUSTHAFI,
KARAYIKKODATHU HOUSE, MILLUPADY,
VELIYATHUNAD, ALUVA,
ERNAKULAM DISTRICT 683102
BY ADVS.
SRI.K.A.JALEEL
SRI.C.Y.VINOD KUMAR

RESPONDENT/COMPLAINANT:

STATE OF KERALA
(REPRESENTED BY THE SUB INSPECTOR OF POLICE)
ALUVA EAST POLICE STATION-CR.NO.992/2012 OF ALUVA
EAST POLICE STATION)REPRESENTED BY THE PUBLIC
PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

SRI.SANAL P RAJ-PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR HEARING
ON 13.2.2025, THE COURT ON 27.02.2025, DELIVERED THE FOLLOWING:

**CR****M.B.SNEHALATHA, J**

Crl.R.P.No.95 of 2018

Dated this the 27th February, 2025**O R D E R**

Revision petitioner is the accused in S.C.No.615/2015 on the file of the Assistant Sessions Court, North Paravur and he is the appellant in Crl.A No.291/2016 on the file of Additional Sessions Court II, North Paravur. In this revision, he assails the judgment of conviction and order of sentence passed against him for the offences punishable under Sections 324 and 326 of IPC.

2. The prosecution case is that on 12.4.2012 at around 8 pm., at UC College-Thadikadavu Road, Aluva West village in front of the shop of accused, accused attacked PW1 with an iron rod and inflicted injuries on his head and caused fracture of his right wrist. Accused also criminally intimidated PW1. The motive for the attack, according to the prosecution was the enmity of the accused towards PW1 for questioning him about the removal of a board fitted by PW1 to the flagpole in front of the shop of the accused.



3. After investigation, the investigating officer laid final report against the accused for the offences punishable under Sections 324, 326, 506(ii) and 308 IPC.

4. The learned Assistant Sessions Judge who tried the case found the accused guilty of the offences under Sections 324 and 326 IPC and he was convicted and sentenced thereunder. Accused was found not guilty of the offences under Sections 506(ii) and 308 IPC and he was acquitted of the said offence.

5. In appeal preferred as Crl.A No.291/2016, the learned Sessions Judge, North Paravur confirmed the conviction under Sections 324 and 326 IPC. But the sentence imposed against the accused was modified in appeal and he was sentenced to undergo simple imprisonment for a period of six months for the offence under Section 324 IPC and sentenced to undergo simple imprisonment for 16 months and to pay a fine of ₹25,000/- for the offence under Section 326 IPC. In default of payment of fine he was directed to undergo simple imprisonment for a period of three months. It was further ordered that if the fine amount is realised, it shall be paid to PW1 as compensation under Section 357(1)(b) Cr.P.C.

6. Aggrieved by the conviction and sentence accused has preferred this revision contending that the trial court and the



appellate court have not analysed the evidence in its correct perspective; that the evidence of PW1 cannot be relied on as it is full of contradictions and embellishments; that the evidence of PWs 2 and 3 who alleged to have witnessed the incident is not reliable and there are material discrepancies in the evidence of PWs 1 to 3. Further, it was contended that since MO1 weapon was not sent for chemical analysis, the use of weapon for the commission of the offence could not be established by the prosecution. Further it was contended that if at all the revision petitioner had inflicted any injury to PW1, it was in exercise of the right of private defence of the body.

7. The learned Public Prosecutor, on the other hand, submitted that the evidence adduced by the prosecution would show that accused attacked PW1 with MO1 iron rod and caused grievous injuries and therefore there is no reason to interfere with the finding of conviction and order of sentence.

8. Let us see whether the impugned judgment of conviction and sentence against the accused needs any interference by this Court.

9. PW1 is the injured and he is the defacto complainant. He testified that on 12.4.2012 at around 7.30 pm he along with Sasi, Sulaiman, Nazar, Abdul Rehman fitted a board of 'Building and Road



Workers Federation' in the flagpole near the shop of the accused at Millupadi Junction, Veliyathunadu East. Thereafter, Sasi, Sulaiman and Nasar had gone for sticking posters. PW1 went to his home and came back again to the spot. Sasi and Sulaiman were also there at that time. Then they could see that the board which they fitted was missing. Accused was standing near the flagpole. PW1 enquired the accused about the missing of the board. Then the accused, who was holding MO1 iron rod beat on the head of PW1 with the said iron rod; PW1 sustained injuries on his head. Accused again beat him and when he warded off the attack with his right hand, the blow hit on his hand causing fracture on his right hand. Sasi and Sulaiman and the people gathered there took him to the hospital.

10. The version of PW1 that he sustained injuries in the wee hours of 12.4.2012 receive corroboration from Ext.P3 wound certificate and the evidence of PW5 doctor, who examined PW1 immediately after the incident. In Ext.P3 wound certificate, the injuries noted are :

- i) Lacerated wound left temporal region of scalp 3 cm.
- ii) Swelling and tenderness on right forearm.
- iii) Abrasion on right knee.
- iv) Abrasion on left upper back.
- v) Undisplaced fracture on lower 3rd shaft of right ulna.

11. In Ext.P3 wound certificate the history of the injury



is noted as "assault by a known person at 8.10 pm on 12.4.2012". PW5 doctor has also opined that the injuries 1, 2 and 5 noted in Ext.P3 wound certificate can be caused by means of MO1 iron rod.

12. The version of PW1 receive corroboration from the versions of PW2 and PW3. They too have testified that on 12.4.2012 at around 7.30 pm, they fitted a board to the flagpole at Millupadi. After a short while, the board fitted was found to be missing from the flag pole. When PW1 asked the accused about the missing of the board, accused attacked PW1 with MO1 iron rod. Both PW2 and PW3 have categorically testified that accused attacked PW1 on his head with MO1 iron rod and caused injury on the head and when the accused again attempted to beat on the head, PW1 tried to ward off the said attack with his hand, the blow hit on the hand of PW1 and he sustained injuries on the hand. PWs 2 and 3 have also identified MO1 iron rod.

13. Though PWs 1 to 3 were cross-examined in detail, the defence could not make any dent in their versions regarding the incident. There are no material discrepancies or inconsistencies in their evidence so as to doubt their versions regarding the incident. The testimony of PW4 also fortifies the presence of the accused at the place of incident.



14. The learned counsel for the revision petitioner/accused argued that PWs 2 and 3 are interested witnesses; that they are the members of the Congress party; that PW1 is a leader of the said party and therefore their versions cannot be relied upon.

15. Even if, PWs 2 and 3 are the supporters of the same political party, that by itself is not a ground to disbelieve the version of PW2 and PW3 that they witnessed the incident. The defence has not succeeded in establishing that PWs 2 and 3 are interested witnesses and they were not present at the time of incident. Nothing was brought out in evidence to suspect their presence at the time of occurrence, rather the suggestion put to PW3 during cross examination that PWs1 to 3 had gone to the shop of the accused for attacking the accused provides sufficient indication of the presence of PW2 and PW3 at the scene of occurrence at the time of incident. There is a ring of truth in the evidence of PWs 1 to 3. The minor discrepancies do not affect the credibility of the prosecution case.

16. It is to be borne in mind that Ext.P1 first information statement was laid immediately after the incident. PW8 the then Head Constable of Aluva Police Station, testified that it was he who recorded Ext.P1 first information statement of the injured on 13.4.2012 at 0.45 hrs. There was no delay in registering Ext.P6 FIR



and therefore, there is no chance for any embellishment.

17. Yet another point canvassed by the learned counsel for the accused was that, even as per the versions of Pws 1 to 3 there was power outage at the time of incident and therefore the identity of the assailant spoken to by PW1 to 3 cannot be relied on.

18. In the first information statement which was given immediately after the incident PW1 has made mention of the source of light namely the light operating on inverter in the nearby shop. PW2 and PW3 have also testified that the light operating on inverter in the nearby shop of one Jabbar was available.

19. Yet another argument advanced by the learned counsel for the revision petitioner is that in Ext.P3 wound certificate, there is no mention of the names of the assailants, who attacked the injured. The learned counsel for the revision petitioner/accused contended that the non mentioning of the name of the assailant to the doctor would show that no such incident as alleged by the prosecution has happened and the accused was falsely implicated.

20. The primary duty of a doctor is to save the life of a person brought before him and to inform the police in medico legal cases and they are not expected to ascertain and record other details such as who was the assailant. In *Pattipati Venkaiah vs State Of*



Andhra Pradesh (AIR 1985 SC 1715), the Hon'ble Supreme Court held as follows:

"Another argument advanced before us was that although PWs 1 and 2 were supposed to be eye-witnesses, they never cared to disclose the name of the assailant to the doctor when the body of the deceased was taken to the hospital. This argument is only stated to be rejected. A doctor is not at all concerned as to who committed the offence or whether the person brought to him is a criminal or an ordinary person, his primary effort is to save the life of the person brought to him and inform the police in medico legal cases. In this state of confusion, PWs 1 and 2 may not have chosen to give details of the murder to the Doctor. It is well settled that Doctors before whom dead bodies are produced or injured persons are brought, either themselves take the dying declaration or hold the post-mortem immediately and if they start examining the informants they are likely to become witnesses of the occurrence which is not permissible."

21. Yet another argument advanced by the learned counsel for the revision petitioner is that MO1 iron rod was not sent for chemical analysis and had it been sent, it would have revealed that the said weapon was not used for the commission of the offence, as alleged by the prosecution and non-sending of MO1 weapon for chemical analysis raises suspicion in the prosecution case. I cannot agree with the said argument advanced by the learned counsel.

22. There is no necessity that in all cases the weapon should be sent for chemical analysis. Even if the weapon of offence is not recovered, and if there are other credible evidence which establishes the guilt of the accused, the court can convict the accused. Therefore, the non-sending of MO1 weapon for chemical analysis is not a ground to doubt the genuineness of the prosecution case and to



discard it when there is other credible evidence like eye witness testimony.

23. The prosecution has succeeded in establishing that on 12.4.2012 at around 8 pm. accused attacked PW1 with an iron rod and caused injury on his head and hand. It is also in evidence that PW1 sustained fracture on his right ulna in the incident. Thus, it stands established that accused voluntarily caused grievous hurt to PW1 as rightly found by the learned Assistant Sessions Judge and learned Sessions Judge.

24. The learned Asst.Sessions Judge has convicted and sentenced the accused for the offence punishable under Sections 324 and 326 IPC. The appellate court has confirmed the said conviction under both sections. Section 326 IPC is a major offence of Section 324 IPC.

25. Section 71 of IPC reads as follows:

“Limit of punishment of offence made up of several offences.- Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.”



26. Section 71 of IPC states that where any offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided. It also states that when an offence falls within two or more separate definitions of offence or where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, the offender shall not be punished with a more severe punishment than the court which tries him could award for any one of such offences.

27. In *Satheeshkumar @ Kari Satheesh v. CBI (2024 KHC OnLine 211)* the Division Bench of this Court held as follows:

".....when an offence under S.302 IPC has been established, it takes in the ingredients of the offence under S.326 IPC, and the offences, though falling under two different definitions of offences, form a single transaction, and the appellant cannot be convicted for both the offences."

28. In the case at hand, as stated earlier, the offence under Section 326 IPC is a major offence of Section 324 IPC and since the accused is found guilty under Section 326 IPC and convicted thereunder, there is no further necessity to convict him under Section 324 IPC, since it form part of the same transaction. Therefore, the conviction and sentence against the accused for the offence under Section 324 IPC stands set aside.

29. The prosecution has succeeded in establishing that the



accused attacked PW1 with an iron rod and caused injury on his head and caused grievous injury on his right ulna. Therefore, the conviction of the accused for the offence under Section 326 IPC stands confirmed.

30. The next aspect for consideration is whether the sentence against the accused needs any interference.

31. The learned counsel for the accused pleaded leniency in the matter of sentence on the ground that he is the sole breadwinner of his family consisting of a physically disabled son.

32. Regard being had to the weapon used, the injuries sustained and the offence committed by the accused, this Court is not inclined to invoke the benevolent provisions of Probation of Offenders Act, 1958.

33. But this Court is of the view that for the offence under Section 326 IPC, a substantive sentence of imprisonment for 6 months and fine of ₹25,000/- would meet the ends of justice.

34. In the result, this revision petition is allowed in part as follows:

- i) The conviction and sentence against the accused for the offence under Section 324 IPC stands set aside.
- ii) The conviction against the accused for the



offence punishable under Section 326 IPC stands confirmed.

The sentence against the accused for the offence under Section 326 IPC stands modified as follows:

The accused is sentenced to undergo simple imprisonment for six months and to pay a fine of ₹25,000/- for the offence under Section 326 IPC. In default of payment of fine, he shall undergo simple imprisonment for two months. If the fine amount is realised, the whole amount shall be paid to PW1 as compensation under Section 357(1)(b) Cr.P.C.

ii) Accused is entitled to set off as provided under Section 428 Cr.P.C for the period if any undergone by him in judicial custody.

Sd/-
M.B.SNEHALATHA
JUDGE

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